

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	
	)	
Northern Illinois Gas Company	)	Docket No. 12-0601
d/b/a Nicor Gas Company	)	
	)	
Reconciliation of revenues collected	)	
under Rider 30 with the actual	)	
costs associated with energy efficiency	)	
and on-bill financing programs.	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S  
REPLY TO BRIEFS ON EXCEPTIONS AND EXCEPTIONS

NOW COMES the Staff of the Illinois Commerce Commission, by and through its undersigned counsel, and pursuant to Section 200.830 of the Commission's Rules, submits its Reply to Briefs on Exceptions and Exceptions to the Proposed Order dated May 27, 2015, as follows:

Apart from Staff, no party save the Northern Illinois Gas Company (Nicor) submitted a Brief on Exceptions. *See, generally, Nicor Brief on Exceptions.*

While Nicor does not take exception to the Proposed Order's conclusion that the expenses associated with the Second Star Club – a luxury skybox at a professional sports venue – should be disallowed, it takes exception to the Proposed Order's recommended findings supporting that conclusion. Specifically, Nicor urges the Commission to eliminate any reference to two decisions in which the Commission disallowed the costs of professional sports tickets. Nicor Brief on Exceptions, 3. Its ostensible basis for this is that Commission decisions are not *res judicata*.

Nicor's exceptions should be rejected and the Commission should not adopt its replacement provisions. First, while Commission decisions are not *res judicata*, it is "elementary that all of the facts passed upon and adjudicated upon [a] prior hearing of [a] case cannot be relitigated[.]" Chicago & West Towns Rwy. v. Commerce Comm'n, 397 Ill. 460, 463 (1947). Nicor's proposed exceptions would have the effect of allowing relitigation of the Second Star Club issue, despite the obvious underlying deficiencies of the Second Star Club as a vehicle for delivering energy efficiency benefits. While the Staff does not profess any insight into Nicor's motives, Nicor's exceptions, if adopted, would permit it to argue in a subsequent reconciliation that the same justifications it offers for the Second Star Club - that the Club was used to promote EEP measures to so-called "trade allies", to "build[] ... new relationships", and to "develop trust and instill confidence" among various parties, see Nicor Initial Brief, 14-15 – should lead to a different conclusion than the one the Proposed Order correctly reaches here. The Commission should reject this, along with Nicor's exceptions.

Nicor is, of course, free to attempt to demonstrate in subsequent reconciliations that actual Nicor customers attended Second Star Club functions in sufficient numbers to justify a finding that Club expenditures might be deemed a prudent use of EEP funds. However, this is one of several problems with the Second Star Club program that the Proposed Order correctly identifies – as a general matter, Nicor customers weren't invited, didn't attend, and, of the small number of customers who did attend, 75% didn't participate in EEP programs. Proposed Order, 13. Based on this, the Proposed Order's finding that "the SSC program was not a successful mechanism for engagement with customers[.]" is completely warranted. Id. The Proposed Order similarly, and correctly,

finds unpersuasive Nicor Gas' assertion that, if given multiple soccer seasons, the engagement effort undertaken through use of the SSC would be ... more successful or prudent[.]” Id. These proposed findings should not be disturbed.

Likewise, Nicor's position that the Commission should not refer in its Order to Commission decisions disallowing as imprudent the cost of tickets to sporting events is directly at odds with Nicor's position as evidenced in its own prior pleadings. Nicor cited no fewer than six Commission decisions in the space of three paragraphs in its Motion to Strike the Attorney General's Initial Brief. Nicor Motion to Strike, ¶¶3-5 (October 16, 2014). Nicor's Reply to the AG's Response contains three citations to Commission Orders. Nicor Reply, 4-6 (November 7, 2014). Nicor cites Commission Orders a further seven times in its Response to the Attorney General's Petition for Interlocutory Review of the ALJ's Order striking the latter's Initial Brief. Response to Petition for Interlocutory Review, 7 and n.1, 2, 3 (December 12, 2014). Accordingly, Nicor's position that the Commission should ignore its own decisions should be rejected.

The Commission decisions Nicor would have stricken are directly relevant to the decision the Commission is called upon to make in this proceeding, and the facts are virtually identical. See Order at 110-111, Commonwealth Edison Co.: Proposed General Increase in Electric Rates, ICC Docket No. 10-0467, 2011 WL 2521858 (Ill.C.C.) (May 24, 2011) (recovery of expenses incurred by utility in purchasing luxury skyboxes to sporting events disallowed by Commission, despite utility contention that such expenses were “reasonable business expenses for employee recognition, team building, and development of business relationships with key customers”); Order, Section IV(b)(7), Northern Illinois Gas Co.: Proposed General Increase in Rates for Gas Service, ICC

Docket No. 95-0219, 1996 WL 34370337 (Ill.C.C.) (June 20, 1996)(recovery of costs for tickets to sporting events used for company-described purpose of “fostering business relationships and maintaining employee morale” disallowed). Reference to these decisions in the Commission Analysis and Conclusion section should be retained.

Indeed, the latter decision is directly relevant to decisional prudence in this proceeding. Prudence is “that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.” Illinois Power Co. v. Commerce Comm’n, 245 Ill. App. 3d 367, 371 (3rd Dist. 1993). Facts available to utility management at the time decisions were made are properly considered. Illinois Power Co., 245 Ill. App. 3d at 371.

Significantly, a fact that was eminently available to Nicor management when it entered into the Chicago Fire contract was the fact that, some years before, the Commission had determined that Nicor itself could not recover costs for tickets to sporting events used for the purpose of “fostering business relationships and maintaining employee morale[.]” Accordingly, Nicor management could not, at the time it entered into the Second Star Club contract, have reasonably considered costs associated with a luxury skybox intended to promote EEP measures to so-called “trade allies”, to “build[] ... new relationships”, and to “develop trust and instill confidence” among various parties, to be something the Commission would consider prudent. Thus, the Nicor decision is directly relevant to the Commission’s decision.

WHEREFORE, Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/ \_\_\_\_\_  
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June 17, 2015

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